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MEMORIAL

TO THE

GENERAL ASSEMBLY OF THE STATE OF INDIANA,

OF THE

HOLDERS OF CERTIFICATES OF STOCK

OF THE

WABASH & ERIE CANAL,

ISSUED BY THE

STATE OF INDIANA.

January, 1871.

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To the General Assembly of the State of Indiana:

The undersigned Committees, representing the holders, both foreign and domestic, of the stock of the State of Indiana, secured by a lien on the Wabash and Erie Canal, are instructed to ask your attention to the provisions of the acts under which the certificates were issued, to the present condition of the security, and of the stock for which it was placed in trust, with the view of obtaining from you such relief as in justice and equity the bond-holders may be entitled to.

The preamble to the Act of 1846 is to the following effect:

"WHEREAS, honor and justice alike require that such equitable provision should be speedily made for the discharge of the pecuniary obligations of the State as shall be

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just and acceptable to its creditors, honorable to the people of Indiana, and at the same time within the ability of the State, without further involving the people in a general debt; And whereas, an arrangement, based upon a moderate system of taxation, and completion of the Wabash and Erie Canal to Evansville, it is believed will secure the objects aforesaid; And whereas, in order to insure so desirable a result, a large portion of our bond-holders *have manifested a willingness to aid in the completion of said canal*, within the ensuing four years, to the Ohio River; And whereas, this proposition embraces, as a general arrangement, the payment, by taxation, of two-and-a-half per cent. on the unprovided public debt of the State, and a reliance for the remaining two-and-a-half per cent. on the lands, tolls, and water rents of said Wabash and Erie Canal (after paying expenses of construction and repairs), thereby greatly relieving the people of Indiana from burdensome taxation, and virtually discharging them from any liability for the said remaining *interest*, and looking alone to the said canal, its tolls and other revenues, for half the *interest* on said entire public debt; And whereas, there is reason to believe that the plan embraced in the following provisions is entirely within the means of the State successfully to accomplish—that it will be acceptable to our creditors—honorable to the people represented by this General Assembly, and will add to the wealth, prosperity and advancement of Indiana: Therefore, Be it enacted," etc., etc."

The Act of 1846 in its enacting clauses embodied the basis on which it was proposed to adjust the debt, viz., by dividing the interest only, as set forth in the preamble, one-half to be paid by taxation, and one-half by the canal tolls, revenues, &c. By the 32d section of the same act, the State reserved, however, the option of dividing the principal, also, by calling

in, at her pleasure, the certificates which were to be first issued under the 1st section of the act, and issuing, in lieu thereof, two certificates for the principal, one chargeable on taxation and the other chargeable on the canal, its tolls, revenues, &c.

This option was exercised in the first section of the supplementary Act of 1847, and the certificates were then issued in the form in which they now exist; as the bond-holders, by this provision of the act (sec. 32), were to look to the canal, its tolls and revenues exclusively as a security for the payment of the one-half of both principal and interest of the original debt, they required more specific guarantees and covenants for the protection of the security thus provided than were contained in the Act of 1846. Hence, for this purpose and also to supply other deficiencies in that act, the Act of 1847 was passed, which contains, among others, the following sections, viz.:

Section 14, Act of 1847, declares that "in order to demonstrate the good faith of Indiana, and for the removal of all doubts, and with a view to create general confidence in the arrangements made by the State for the liquidation of its debts, be it enacted, that the tolls, revenues and profits of the said canal and its appurtenances, present and future, etc., etc., *shall remain and be* INVIOLATE AND IN FULL FORCE; and the payment of the principal moneys and the interest on the certificates and stock intended to be created pursuant to the said act and this act, and all the certificates and evidences of the title thereof, respectively, *shall be and continue* EFFECTUAL AND INVIOLATE *by the means aforesaid*, until the objects and purposes of the said act, and of this present act, shall be fully accomplished."

Section 22 declares: "The debt which it is the object of

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the trust created by the said recited act (as amended by this act) to liquidate, as in the said act is mentioned, having been contracted under the authority of the State of Indiana, *and for the service of the people of that State*, and it being desirable, as well for the credit of the State, as also to establish confidence in the public in general, and the subscribers in particular [meaning the subscribers to the advance for the completion of the canal to Evansville], to secure the utmost punctuality in the fulfilment of the objects of the said trust, it is hereby declared, that the tolls and revenues of the said canal, present and future, and the lands and lots so conveyed or intended to be conveyed, as hereinbefore mentioned, and the proceeds thereof, when sold, shall be, and the same are hereby specially pledged, to form a distinct and particular fund for the redemption of the stock and certificates to be issued in pursuance of the said recited act and of this act; and the said State *shall not direct or permit* any appropriation to be made of such tolls and revenues, lands and proceeds, or any of them, for the general purposes of the State, *or otherwise howsoever*, other than, and except for the purposes of the said trust, as directed by the said act (as amended by this act), until the said stock and certificates, and all *interest* thereon, shall have been fully paid and satisfied out of the tolls and revenues of the said canal, OR the State *shall have* REDEEMED *said stock and certificates by the payment of the* PRINCIPAL *thereof;* the right of doing which, after twenty years, from the nineteenth day of January, 1846, is hereby reserved by the State, as provided in the act to which this is an amendment."

These were positive and comprehensive covenants, not only restraining the State from every kind and degree of interference with the present and prospective revenues of the canal, which were the sole security and reliance of the credit-

ors, but imposing upon it also the most sacred obligations to maintain that security and reliance, unchanged in character and unimpaired in value, until their debt was paid.

They were assurances and pledges of good faith by the State of Indiana to her creditors, *which constituted the very essence of the contract*, which were required by the nature of that security, and were expressly designed to establish the confidence of the bond-holders in particular and the public in general in the arrangement, and to induce the former to believe that they would be justified in surrendering their bonds, taking in lieu thereof the new securities, and in advancing large sums of money for the prompt and effective completion of the canal.

All these provisions were evidently inserted, not only to demonstrate the good faith with which the State of Indiana intended to provide for the full and complete payment of her existing indebtedness, principal and interest, but also to assure her creditors that if they complied (as they have done) with their part of the contract, she, on her part, would neither do, permit, nor suffer any act tending to diminish, divert or interfere with the tolls, revenues, etc., of the canal.

The subsequent enactment of a general Railroad Law, which enabled competing lines of railroads to destroy the revenues of the canal, has interfered with and absolutely prevented the carrying into effect the provisions of the Bill of 1846–'47, and the holders of the Canal Certificates, by no fault of their own, have been deprived of the security which the State had set apart for their benefit. And although they have received from the State payment of one-half of the debt originally held by them in 1847, they have yet on hand, practically valueless, one-half of the said original debt, with accrued interest unpaid, unprotected and unprovided for.

The claim, therefore, of the bond-holders is predicated on this breach of faith on the part of the State, whereby the

security pledged for the payment of their debt, and on which they relied, was destroyed. They also claim that, if the State has violated that proviso of section 8 of the Act of 1847, which declares "that the State will make no provision whatever hereafter to pay either principal or interest on any internal improvement bond or bonds until the holder or holders thereof shall have first surrendered said bonds to the agent of State, and shall have received, in lieu thereof, certificates of stock, as provided in the first section of this act, anything in this act to the contrary notwithstanding," by the payment of any of the internal improvement bonds then outstanding, principal and interest, that in law and equity she is bound to do equal justice to all other of the creditors.

In submitting this brief memorial, we declare our conviction that the time has arrived for a full and fair understanding of the claims of the Canal Certificate holders, and how far they are entitled to consideration and recognition. While those we represent have no doubt that they have a just claim against the State of Indiana for the payment of these certificates, with arrears of interest, according to the terms of the act, we are aware that a portion of the people of your State entertain an opposite view, and consider that the Wabash and Erie Canal was taken by the bond-holders in full payment of one-half of the old State Bonds, issued from 1832 to 1839. This interpretation, however, we do not consent to. We regard it as utterly repugnant to the plain letter of the acts. In order, therefore, to remove all doubts on this point, and to prove to your honorable body and to your constituents that the bond-holders desire nothing from you but what they are justly entitled to, and, anxious as we are to dispose of this entire question on the highest ground of justice to the State, her people, and the claimants, we respectfully ask that, if you

are not willing to grant the relief asked for, your honorable body will consent to submit the question of the State's liability in the premises, and the stock-holders' rights, to such judicial tribunal as your honorable body may select, and by whose decision we are willing to abide.

All of which is respectfully submitted.

NEW YORK, *December*, 1870.

For Messrs. DENT, PALMER & Co.,
" " N. M. ROTHSCHILD & SONS,
" " BARING, BROTHERS & Co.,
" " FREDERICK HUTH & Co.,

London Committee, representing the holders of Indiana Canal Certificates.

" Estate of GEORGE PEABODY,

GEORGE MOSLE,
AUGUST BELMONT,
JAMES TINKER,
A. GRACIE KING,

New York Committee, representing the holders of Indiana Canal Certificates.